

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

BUILDING CODE APPEALS BOARD
DOCKET NO.: 10-950

Anthony Metrano,
Appellant

v.

Town of Falmouth,
Appellees

BOARD'S RULING ON APPEAL

Introduction

This matter came before the State Building Code Appeals Board ("Board") on appellant's appeal filed pursuant to G.L. c.143, §100 and 780 CMR 122.1. In accordance with 780 CMR 122.3 the appellant petitioned the Board to grant a variance based on the Seventh Edition of the Massachusetts State Building Code ("Code"). For the following reasons, the variance is hereby **GRANTED** with a stipulation.

The appellant requested that the Board grant a variance from 780 CMR Section 5305.1. The appellant appeared for the hearing *pro se*. Eladio Gore, Building Commissioner for the Town of Falmouth testified on behalf of the appellee. All witnesses were duly sworn.

Procedural History

The Board convened a public hearing on November 23, 2010, in accordance with G.L.c. 30A, §§10 & 11; G.L.c. 143, §100; 801 CMR 1.02; and 780 CMR 122.3. All interested parties were provided with an opportunity to testify and present evidence to the Board.

Findings of Fact

The facts of this matter are largely not in dispute. Instead, this matter turns on the review of the applicable provisions of the State Building Code. The Board bases the following findings upon the testimony presented at the hearing. There is substantial evidence to support the following findings:

1. The property at issue is located at 58 Sippewissett Road, Falmouth, MA.
2. The subject property involves making an existing basement habitable.
3. The basement has a beam that is 6 feet 4 inches high.
4. The beam is located on the path to the stairway.
5. There are existing sliding doors in the basement.
6. The house was built in 1971.

Analysis

A. Jurisdiction of the Board

There is no question that the Board has jurisdiction to hear this case. The governing statute provides that:

Whoever is aggrieved by an interpretation, order, requirement, direction or failure to act by any state or local agency or any person or state or local agency charged with the administration or enforcement of the state building code or any of its rules and regulations, except any specialized codes as described in section ninety-six, may within forty-five days after the service of notice thereof appeal from such interpretation, order, requirement, direction, or failure to act to the appeals board. G.L. c.143, §100.

The issues giving rise to this matter directly implicate provisions of the Code. As such, this Board has jurisdiction to decide this case pursuant to G.L. c. 143, §100.

B. State Building Code requirements

There are two issues in this appeal. The first is whether the appellant's or the building commissioner's interpretation of the exceptions to 780 CMR 5305.1 was correct. The second is that if the building commissioner's interpretation was correct is whether to grant a variance to 780 CMR 5305.1.

The relevant provision of the regulations states,

"Habitable rooms, hallways, corridors, bathrooms, toilet rooms, laundry rooms and basements shall have a ceiling height of not less than seven feet (2134 mm). The required height shall be measured from the finish floor to the lowest projection from the ceiling." 780 CMR 5305.1. The exceptions to that provision that are cited in the appeal are numbers 1 and 5. Number 1 states, "Beams and girders spaced not less than four feet (1219 mm) on center may project not more than six inches (152 mm) below the required ceiling height" and number 5 states, "Ceiling heights in habitable basements, including drop ceilings, shall be a minimum of six feet eight inches (2032 mm)." See 780 CMR 5305.1, Exceptions 1, 5.

The appellant testified that it was their interpretation that they could take exception number 5 allowing the ceiling height to be six feet eight inches and then take exception number 1 allowing the beam to be another 6 inches lower-resulting in a requirement of only 6 feet 2 inches for the beams.

The Building Commissioner testified that his interpretation of the Code allowed for either a drop of up to 6 inches for beams and girders, resulting in a minimum required height of 6 feet 6 inches, *or* a minimum ceiling height in a habitable basement of 6 feet 8 inches.

The Board determined that the Building Commissioner's interpretation was correct, thus the appellant requested relief for 2 additional inches to allow for the beam to be located at 6 feet 4 inches.

The appellant testified that raising the beam was not feasible because it would require raising the whole house. The appellant also testified that no structural changes are being made to the

house, that they are only adding a partition wall with insulation in order to make the basement habitable.

Because the height of the beam is an existing condition and because the basement has been used like this for nearly 40 years the variance may be granted so long as a cushion is placed on the beam as a safety precaution.

Conclusion

A motion was made by Alexander MacLeod and seconded by Jacob Nunnemacher to **Grant** the variance to 780 CMR Section 5305.1 with the **stipulation that** the appellant must put a cushion under the beam so that no one hits their head.



Jacob Nunnemacher

Alexander MacLeod

Brian Gale

Any person aggrieved by a decision of the State Building Code Appeals Board may appeal to Superior Court in accordance with G.L. c.30A, §14 within 30 days of receipt of this decision.

DATED: January 4, 2011